



# City of NORFOLK

C: Dir., Department of General Services

To the Honorable Council  
City of Norfolk, Virginia

April 28, 2015

From: David S. Freeman, AICP  
Director of General Services

**Subject:** Encroachment Agreement  
for Outdoor Dining – Sweet Teas  
Norfolk LLC, 345 Granby Street,  
Norfolk, VA 23510

Reviewed: Sabrina Joy Hogg  
Sabrina Joy-Hogg, Deputy City Manager

**Ward/Superward:** 2/6

Approved: Marcus D. Jones  
Marcus D. Jones, City Manager

**Item Number:**

**R-1**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Lewis Asare  
Sweet Teas Norfolk LLC  
345 Granby Street, Suite C  
Norfolk, VA 23504

Building Owner:  
JJB Financial, LLC  
207 Granby St Ste 203  
Norfolk VA 23510-1825

III. **Description**

This agenda item is an Encroachment Agreement to permit restaurant operator Sweet Teas Norfolk LLC to encroach approximately 115 square feet into City of Norfolk right-of-way. The purpose of this encroachment is to allow outdoor dining to encroach into the right-of-way located at 345 Granby Street, Norfolk, VA 23510.

IV. **Analysis**

An encroachment is an object or structure that infringes into the City of Norfolk's right-of-way or property. Norfolk City Code, Section 42-10, requires all encroachments into City rights-of-way and properties to be approved by City Council.

The Encroachment Agreement will permit Sweet Teas Norfolk LLC to erect a railing structure to enclose tables and chairs for outdoor dining that will encroach into the right-of-way at 345

Granby Street, Norfolk, VA 23510. The term of the encroachment is no longer than five (5) years, commencing on March 1, 2015 and terminates February 28, 2020.

Hours of Operation	Outdoor Seating Capacity
Mon-Fri 6:30 am - 7 pm Sat-Sun 9 am - 7 pm	8

**V. Financial Impact**

The applicant will pay the City an annual rent in the amount of \$690.00 at \$6.00 PSF paid annually for a 5 year term.

**VI. Environmental**

There are no known environmental issues associated with this property.

**VII. Community Outreach/Notification**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action**

The outdoor dining request was approved by the Design Review Committee on December 5, 2014.

**IX. Coordination/Outreach**

This letter has been coordinated with the Department of General Services - Office of Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Encroachment Agreement

Form and Correctness Approved

By

Office of the City Attorney

Contents Approved:

By

DEPT.

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE GRANTING SWEET TEAS NORFOLK LLC PERMISSION TO ENCROACH INTO THE RIGHT OF WAY OF GRANBY STREET APPROXIMATELY 115 SQUARE FEET FOR THE PURPOSE OF OUTDOOR DINING AND APPROVING THE TERMS AND CONDITIONS OF THE ENCROACHMENT AGREEMENT.

- - -

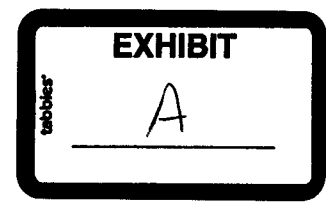
BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the terms and conditions of the Encroachment Agreement between the City of Norfolk and Sweet Teas Norfolk LLC ("Sweet Teas"), a copy of which is attached hereto as Exhibit A, are hereby approved, and in accordance therewith, permission is hereby granted to Sweet Teas to encroach into the right of way of Granby Street approximately 115 square feet for the purpose of outdoor dining and for no other purpose.

Section 2:- That the City Manager and other proper officers of the City are hereby authorized to execute the Encroachment Agreement and do all things necessary for its implementation.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Encroachment Agreement as he may deem advisable consistent with the intent of the Council as expressed therein.

Section 4:- That this ordinance shall be in effect from and after its adoption.



## **ENCROACHMENT AGREEMENT**

This **ENCROACHMENT AGREEMENT** (hereinafter "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (hereinafter, "City"), and **SWEET TEAS NORFOLK LLC**, a limited liability company whose address is 345 Granby Street, Suite C, Norfolk, Virginia 23510 (hereinafter, "Sweet Teas").

### **WITNESSETH:**

1. **ENCROACHMENT AREA:** City hereby grants permission to Sweet Teas to encroach into the right of way at 345 Granby Street approximately 115 +/- square feet, as shown on Exhibit A attached hereto ("Encroachment Area"), for the purpose of outdoor dining and for no other purpose.

2. **USE:** Sweet Teas shall be permitted to occupy the Encroachment Area for outdoor dining purposes in conjunction with the operation of the restaurant known as Sweet Teas.

3. **TERM; TERMINATION:** The term of the permission to encroach granted hereby shall be no longer than five (5) years and shall commence on March 1, 2015, or upon the effective date of any authorizing ordinance, whichever shall last occur, and shall terminate on February 28, 2020. However, it is expressly understood that the permission granted hereby is expressly subject to the right of revocation by the Norfolk City Council, and that in the event of such revocation, Sweet Teas, or its successors or assigns, if requested by City, shall remove the encroaching structures and shall cease using the Encroachment Area.

4. **COMPENSATION:** As compensation for the privilege of encroaching into the right of way, Sweet Teas shall pay City annual rent in the amount of Six Hundred Ninety and

00/100 Dollars (\$690.00) beginning on the first day of March, 2015 or the day the ordinance is effective, whichever is later. The rent shall be paid by check payable to the "Norfolk City Treasurer" and sent to the Department of General Services, 232 E. Main Street, Suite 250, Norfolk, VA 23510, and Attn: Ms. Elizabeth Leathers.

5. **LATE FEES:** For any late payments received 15 days after the first of each month, Sweet Teas shall pay a late fee of five percent (5%) of the amount not paid when due.

6. **UTILITIES:** City shall not be responsible for utilities of any type used within the Encroachment Area. Sweet Teas shall pay all utility meter and utility services charges for all utilities, including but not limited to, gas, electricity, water, telephone, sewer, and any other necessary to serve the Encroachment Area.

7. **REPAIRS:** Sweet Teas shall keep and maintain the Encroachment Area in good and complete state of repair and condition. Sweet Teas shall make all repairs and replacements of every kind to the sidewalks and paved areas of the Encroachment Area in order to preserve and maintain the condition of the Encroachment Area. All such repairs and maintenance shall be performed in a good and competent manner, be at least equal in quality and usefulness to the original components, and not diminish the overall value of the Encroachment Area.

8. **REQUIREMENTS OF PUBLIC LAWS:** Sweet Teas shall suffer no waste or injury to the Encroachment Area and shall comply with all federal, state, and municipal laws, ordinances and regulations applicable to the structure, use, and occupancy of the Encroachment Area. In addition, Sweet Teas shall effect the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the Encroachment Area.

9. **RIGHT TO ENTER AND CURE:** City shall retain the right to enter upon the Encroachment Area at any time for the purpose of inspecting the Encroachment Area,

ascertaining compliance with this Agreement, and making any repairs, which City deems necessary because of any failure of Sweet Teas to meet its obligations under this Agreement. The cost of any such repairs shall be deemed additional compensation payable to the City on demand. Any entry upon the Encroachment Area for cure and repair shall be accomplished by City at reasonable times and in the exercise of reasonable discretion by the City. The making of any repairs by City shall not constitute a waiver by City of any right or remedy upon Sweet Teas' default in making repairs.

10. **NOTICE:** Any notice shall be in writing and shall be delivered by hand or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

City: Department of General Services  
Attn: Ms. Elizabeth Leathers  
232 E. Main Street, Suite 250  
Norfolk, Virginia 23510

Sweet Teas: Sweet Teas Norfolk LLC  
Attn: Mr. Lewis Asare  
345 Granby LLC, Suite C  
Norfolk, Virginia 23510

With copies to: City Attorney  
900 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510

Either party hereto may change its address to which said notice shall be delivered or mailed by giving notice of such change as provided above. Notice shall be deemed given when delivered (if delivered by hand) or when postmarked (if sent properly by mail).

11. **ENVIRONMENTAL MATTERS:** Sweet Teas agrees that it will not introduce onto the Encroachment Area any toxic, hazardous, or dangerous materials unless such material is stored, safeguarded, or used in accordance with applicable laws and regulations. Sweet Teas

will not allow any air, water, or noise pollution to occur in the Encroachment Area. Sweet Teas hereby agrees to use and occupy the Encroachment Area in a safe and reasonable manner and in accordance with applicable law.

City in turn agrees that Sweet Teas shall not be responsible or assume liability for environmental conditions existing on or about the Encroachment Area prior to occupancy by Sweet Teas thereof.

12. **DESTRUCTION:** If the encroaching structures or any part thereof shall be damaged or destroyed by fire, lightning, vandalism, or by any other casualty or cause, the permission granted hereby shall be automatically terminated unless the parties agree, in writing, to continue to permit the encroachments granted by this Agreement.

13. **NON-LIABILITY OF CITY:** City shall not be liable for any damage or injury which may be sustained by Sweet Teas or any other person as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, gas, sewer, waste or spoil pipes, roof, drains, leaders, gutters, valleys, downspouts or the like, or of the electrical, ventilation, air conditioning, gas, power, conveyor, refrigeration, sprinkler, heating or other systems, elevators or hoisting equipment, if any, upon the Encroachment Area, or by reason of the elements; or resulting from acts, conduct or omissions on the part of Sweet Teas, or their agents, employees, guests, licensees, invitees, assignees or successors, or on the part of any other person or entity.

14. **REMOVAL OF SNOW:** Sweet Teas agrees to remove or cause to be removed, as the need for the same arises, snow and ice from the Encroachment Area.

15. **ALTERATIONS:** Sweet Teas covenants and agrees that it will not make any improvements, changes installations, renovations, additions, or alterations in and about the Encroachment Area without the prior written consent of the City other than the approval given



by Norfolk's Design Review Committee and Norfolk's Planning Commission. If Sweet Teas installs or makes any improvements, additions, installations, renovations, changes on or to the Encroachment Area with the approval of City, Sweet Teas hereby agrees to remove, if requested by City, any improvements, additions, installations, and renovations, changes on or to the Encroachment Area upon termination of this Agreement. In the event Sweet Teas fails to remove the improvements, additions, installations, renovations, and changes on or to the Encroachment Area when requested to do so by City, then the City may remove the improvements, additions, installations, renovations, changes and Sweet Teas shall pay for the cost of such removal.

16. **ASSIGNMENT AND SUBLETTING:** City and Sweet Teas agree that the permission to encroach granted hereby may not be assigned by Sweet Teas without written approval from Norfolk's City Manager.

17. **SURRENDER BY SWEET TEAS:** Sweet Teas will surrender possession of the Encroachment Area to City and remove all goods and chattels and other personal property therefrom upon termination of the permission granted hereby. Sweet Teas shall return the Encroachment Area to the City in as good order and condition as it was at the beginning of Sweet Teas' use of the Encroachment Area. If Sweet Teas has been requested to remove and fails to remove all items from the Encroachment Area upon termination hereof, City is authorized to remove and dispose of any such personal property and Sweet Teas shall be liable to City for the cost of any removal and disposal.

18. **INSURANCE:** Sweet Teas shall maintain in full force and effect Commercial General Liability ("CGL") insurance with a combined single limit policy of bodily injury, death and property damage insurance for Sweet Teas of one million dollars (\$1,000,000) per



occurrence and two million dollars (\$2,000,000) aggregate insuring against all liability arising out of the use, occupancy, or maintenance of the Encroachment Area and appurtenant areas. CGL insurance shall be written on an approved ISO form for coverage in the Commonwealth of Virginia, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and liability assumed under insured contract. The City its officers, employees, agents and representatives shall be named as additional named insured on such policy. Coverage shall be evidenced by a Certificate of Insurance provided to the City within thirty (30) days after adoption of this Agreement. All insurance policies and certificates shall provide for thirty (30) days advance notice in writing to the Sweet Teas if the insurance is cancelled or modified. Sweet Teas shall inform the City Attorney and the Department of Development within 15 days of receiving such notice or cancellation, and immediately obtain coverage compliant with this agreement.

Sweet Teas shall maintain the applicable statutory Workers' Compensation Insurance, and Employer's Liability Insurance with a limit of at least \$500,000 per accident/disease, and policy limit of \$500,000 covering any of Sweet Teas' employees whose work for Sweet Teas occurs within the premises which are subject to this agreement.

19. **INDEMNIFICATION**: Sweet Teas shall indemnify and save harmless City from all fines, penalties, costs, suits, proceedings, liabilities, damages, claims and actions of any kind arising out of the use and occupation of the Premises by reason of any breach or nonperformance of any covenant or condition of this Lease by Sweet Teas, or by Sweet Teas' intentional act or negligence, and not caused in whole or in part by City. This indemnification shall extend to all claims of any person or party for death or injury to persons and damage to any property, and to legal expenses, including reasonable attorney's fees, incurred by City in

the defense of such claims or incurred by City as a result of a breach of any provision of this Lease by Sweet Teas, but does not extend to circumstances caused in whole or in part by City. Sweet Teas shall not be responsible for damage to the building resulting from acts of nature or for structural damage, which it is not the fault of Sweet Teas with the exception of replacement of the glass storefront.

20. **FIXTURES:** City covenants and agrees that no part of the improvements constructed, erected or placed by Sweet Teas in the Encroachment Area shall be or become, or be considered as being, affixed to or a part of the right of way, and any and all provisions and principles of law to the contrary notwithstanding, it being the specific intention of City and Sweet Teas to covenant and agree that all improvements of every kind and nature constructed, erected or placed by Sweet Teas in the Encroachment Area shall be and remain the property of Sweet Teas, unless such improvements are not removed upon termination of this Agreement.

21. **ENVIRONEMENTAL:**

(a) For purposes of this section:

(i) "Hazardous Substances" include any pollutants, dangerous substances, toxic substances, hazardous wastes, hazardous materials or hazardous substances as defined in or pursuant to the Resource and Conservation Recovery Act (42 U.S.C. SS6901 et seq.) (IIRCRAII), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. SS9601 et seq.) (CERCLAII) or any other federal, state, or local environmental law, ordinance, rule or regulation.

(ii) "Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, disposing, or dumping.

(iii) "Notice" means any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from any authority of the Commonwealth of Virginia, the United States Environmental Protection Agency (USEPA) or other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the Commonwealth of Virginia, or into waters outside the jurisdiction of the Commonwealth of Virginia or into the "environment," as such terms are defined in CERCLA. "Notice" shall include the imposition of any lien on any real property, personal property or revenues of the Sweet Teas, including but not limited to the Sweet Teas' interest in the Leased Premises or any of Sweet Teas' property located thereon, or any violation of federal, state or local environmental laws, ordinances, rules, regulations, governmental actions, orders or permits, or any knowledge, after due inquiry and investigation, or any facts which could give rise to any of the above.

(b) To the extent that Sweet Teas may be permitted under applicable law to use the Encroachment Area for the generating, manufacture, refining, transporting, treatment, storage, handling, disposal, transfer or processing of Hazardous Substances, solid wastes or other dangerous or toxic substances, Sweet Teas shall insure that said use shall be conducted at all times strictly in accordance with applicable statutes, ordinances and governmental rules and regulations. Sweet Teas shall not cause or permit, because of any intentional or unintentional act or omission, a Release of Hazardous Substances in the Encroachment Area. If any such intentional or unintentional act or omission causes a Release of Hazardous Substance in the Encroachment Area, Sweet Teas shall promptly clean up and remediate such Release in

accordance with the applicable federal, state and local regulations and to the reasonable satisfaction of City.

(c) Sweet Teas shall comply with all applicable federal, state, and local environmental laws, ordinances, rules and regulations, and shall obtain and comply with all permits required thereunder, any successor, or new environmental laws. Upon the receipt of any Notice, Sweet Teas shall notify City promptly in writing, detailing all relevant facts and circumstances relating to the Notice.

(d) The requirements of this Section 20 shall apply to any successor in interest to Sweet Teas, whether due to merger, sale of assets or other business combination or change of control.

(e) Sweet Teas hereby agrees to defend (with counsel satisfactory to City) and indemnify and hold City harmless from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, reasonable cleanup costs and attorney's fees arising under this indemnity) which may arise directly or indirectly from any use or Release of Hazardous Substances in the Encroachment Area and losses and claims against City resulting from Sweet Teas failure to comply strictly with the provisions of this Section 20. The provisions of this Section 20 shall survive the termination of this permission granted by this Agreement.

22. **LIENS OR ENCUMBRANCES :** If because of any act or omission of Sweet Teas, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Encroachment Area, Sweet Teas shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from the City to Sweet Teas of the filing thereof, and Sweet Teas shall have the right to contest the validity of such lien if it so chooses.

23. **APPLICABLE LAW:** The permission granted by this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any suit or legal proceeding relating to permission granted hereby shall be brought only in the state or federal courts located in the Eastern District of Virginia.

24. **WAIVER OF TRIAL BY JURY:** To the extent permitted by law, City and Sweet Teas mutually waive their rights to trial by jury in any action, proceeding, or counterclaim brought by either party against the other with respect to any dispute or claim arising out of the permission to encroach granted to Sweet Teas by this agreement.

25. **OTHER REQUIREMENTS:**

(a) Sweet Teas shall comply with the City of Norfolk's Downtown Outdoor Dining Policy.

(b) Sweet Teas shall comply with all requirements of the City of Norfolk Department of Public Health with respect to the use of the Encroachment Area.

(c) The use of the Encroachment Area shall be subject to the jurisdiction and review of the City of Norfolk's Design Review Committee.

(d) Sweet Teas's use of the Encroachment Area shall not interfere with any water meters or sewer cleanouts.

(e) A trashcan compatible in design and style with the table and chairs will be provided for the outdoor dining, and trash shall be removed daily.

(f) Tables and chairs will be arranged according to plan approved by Norfolk's Design Review Committee.

26. **TITLES AND HEADINGS:** Titles and headings are inserted in this Agreement for reference purposes only, and shall not be used to interpret the Agreement.

27. **SEVERABILITY:** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. In the event that any provision or portion of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such provision or portion shall be deemed reformed, insofar as is possible, to cure the defect and give maximum effect to the intent of the City and Sweet Teas entering into this Agreement, and in any event the remainder of the Agreement shall continue in full force and effect.

28. **ENTIRE UNDERSTANDING:** This Agreement constitutes the entire understanding between or on behalf of the City and Sweet Teas and supersedes any prior understandings and/or written or oral agreements between them or on their behalf respecting the subject matter herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement, which are not fully expressed herein.

This Agreement may be modified or amended only by a writing signed and dated by both parties. All amendments shall be incorporated and made a part of this Agreement, and attached hereto.

29. **SUCCESSORS AND ASSIGNS:** All rights hereunder shall inure to the benefit of and all obligations hereunder shall be binding upon successors, assigns, subsidiaries, subrogees, parents, agents, employees, attorneys, accounts, legal representatives, directors, shareholders, heirs, and executors or administrators of each of the parties to this Agreement.

30. **COMPLIANCE WITH FEDERAL IMMIGRATION LAW:** At all times during which any term of this Agreement is in effect, Sweet Teas does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any

alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed either by Title 8, Section 1324a of the United States Code or the U.S. Attorney General.

31. **AUTHORITY TO EXECUTE:** The terms of this Agreement are contractual and not mere recital, and the individuals executing this Agreement hereby represent and warrant that they have full and complete authority to covenant and agree as herein provided and to execute this Agreement on behalf of the Parties hereto.

32. **AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH:** Sweet Teas hereby represents that it is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

33. **COUNTERPARTS:** The Agreement may be signed in counterparts. The Parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures.

**IN WITNESS WHEREOF,** the parties hereto have executed or have caused this Encroachment Agreement to be executed by their duly authorized officers and their corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**(SIGNATURE PAGES TO FOLLOW)**



**CITY OF NORFOLK**

By: \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

**APPROVED AS TO CONTENTS:**

\_\_\_\_\_  
Director, Department of General Services

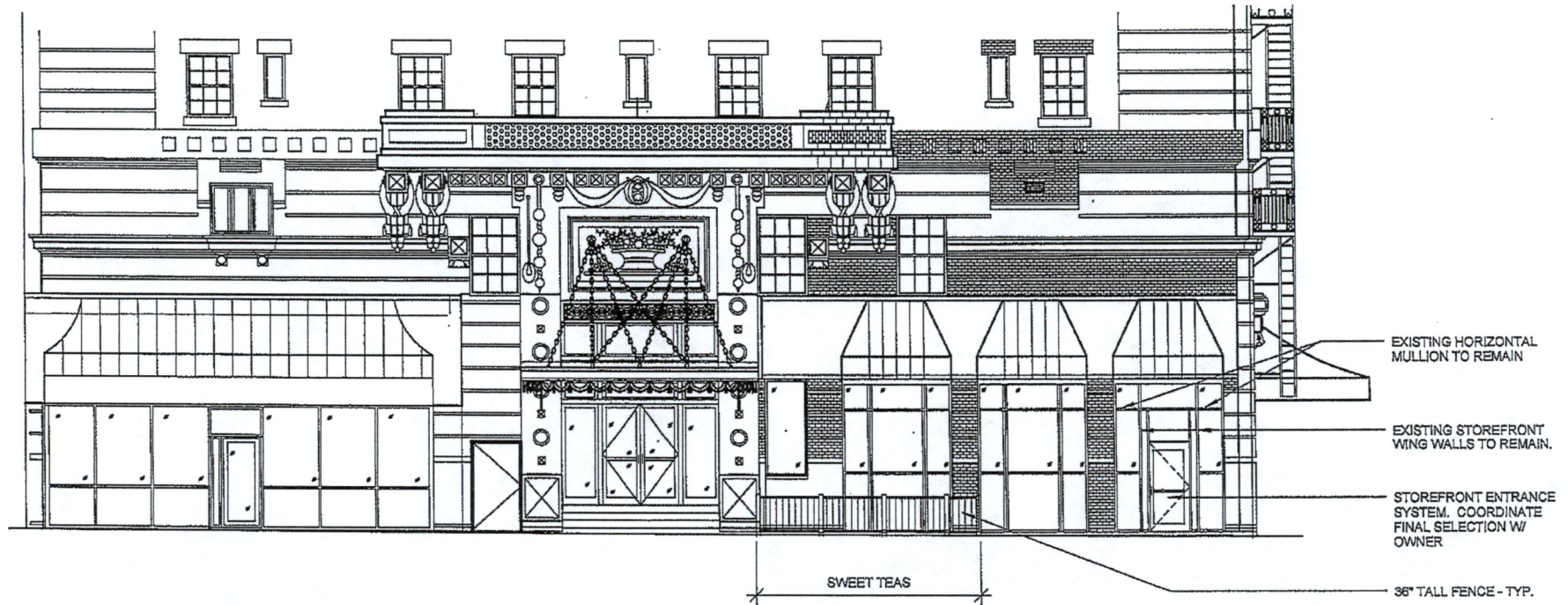
**FORM & CORRECTNESS APPROVED:**

\_\_\_\_\_  
Deputy City Attorney

**SWEET TEAS OF NORFOLK LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_



GROUND FLOOR GRANBY STREET  
ELEVATION  
① 1/8" = 1'-0"



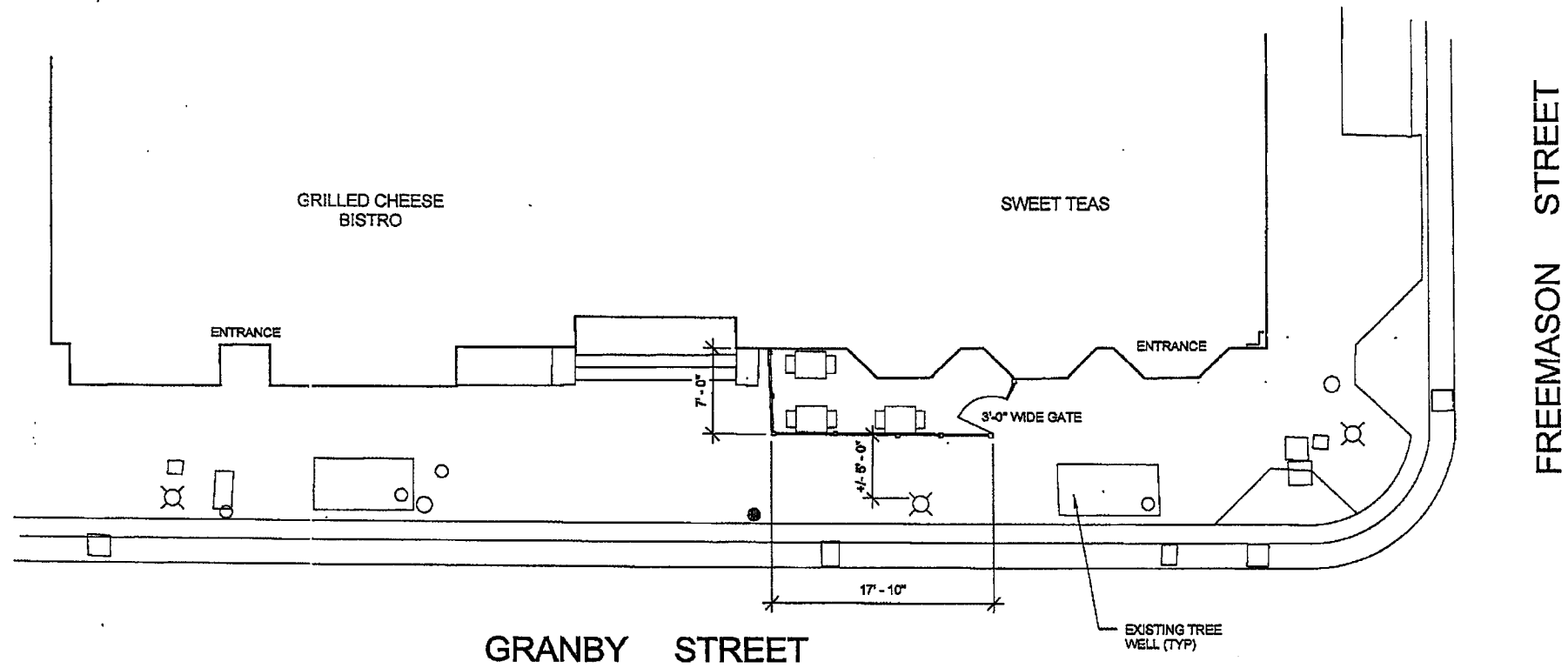
RETNAUER BAYNES  
ASSOCIATES, LLC.

MARATHON DEVELOPMENT GROUP  
345 GRANBY STREET-SWEET TEA'S

No.	Description	Date

#### GROUND FLOOR ELEVATION

Project number	14051	SKA-004
Date	12/02/2014	
Drawn by	Author	Scale 1/8" = 1'-0"
Checked by	Checker	



① 345 GRANBY STREET PARTIAL GROUND FLOOR PLAN  
1/8" = 1'-0"



RETNAUER BAYNES  
ASSOCIATES, LLC.

MARATHON DEVELOPMENT GROUP  
345 GRANBY STREET-SWEET TEA'S

No.	Description	Date

345 GRANBY STREET OUTDOOR SEATING

Project number 14051  
Date 12/02/2014  
Drawn by Author  
Checked by Checker

SKA-005

Scale 1/8" = 1'-0"

### **Description of Encroachment**

The existing 9 story James Madison building is located at 345 Granby Street on the corner of Granby and Freemason. The existing width of the sidewalk along the Granby Street façade is 11'-0" +/- and along the Freemason Ave. façade is 13'-0" +/-.

The requested encroachment is for the following:

- Outdoor dining area totaling 115 +/- square feet fronting Granby Street for the Sweet Teas restaurant.

Please refer to attached site plan, floor plan and elevations showing the elements of encroachment.